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NOTES.

STATE TAXATION AS AFFECTING INTERSTATE COMMERCE.—The right of states of the Union absolutely to exclude foreign corporations from their territory, or to impose such conditions as they may see fit upon their admission, is well settled. *Paul* v. *Virginia* (1868) 8 Wall. 168; *Bank of Augusta* v. *Earle* (1839) 13 Pet. 519. But this right is subject to the limitation that a state may not impose any regulation upon interstate commerce. The cases of *Tel. Co.* v. *Texas* (1881) 105 U. S. 460 and *Leloup* v. *Port of Mobile* (1888) 127 U. S. 640, overruling *Osborne* v. *Mobile* (1872) 16 Wall. 479, settled the law that a state could not levy a tax upon interstate commerce, as taxation is a form of regulation. And this applies not only to taxes directly but also indirectly levied on interstate commerce; *Robbins* v. *Shelby Taxing Dist.* (1887) 120 U. S. 489; *Brown* v. *State of Maryland* (1827) 12 Wheat. 419; as by a tax upon agents soliciting orders to be shipped from another state; *Walling* v. *Michigan* (1886) 116 U. S. 446; *Stockard* v. *Morgan* (1902) 185 U. S. 27; or by taxing the gross receipts of a railroad, which are derived partially from interstate commerce. *Philadelphia Steamship Co.* v. *Pennsylvania* (1887) 122 U. S. 326; shaking,

although not expressly overruling *State Tax on Ry. Gross Receipts* (1872) 15 Wall. 284; *Fargo* v. *Michigan* (1887) 121 U. S. 230.

Not every tax, however, which imposes a burden on interstate commerce, is invalid. In the case of *Western Union Tel. Co.* v. *Taggart* (1896) 163 U. S. 1, a tax was laid upon the property within the state, valued at such a proportion of the capital stock as the length of its lines within the state bore to the total length of its lines, deducting the value of the real estate held by the company within the state, but not deducting the value of its franchises granted by the United States. In *Adams Exp. Co.* v. *Ohio* (1897) 165 U. S. 194, a tax was laid upon the property of the company, its value being determined by a consideration of the value of the company's stock. Although these were property taxes, yet the taxable value of the property was determined by the use to which it was put, which was largely its employment in carrying on interstate commerce. The burden of the tax undoubtedly, therefore, fell upon interstate commerce. See *Erie Railroad Co.* v. *Pennsylvania* (1895) 158 U. S. 431; *Pullman's Car Co.* v. *Pennsylvania* (1891) 141 U. S. 18. The principle of these cases was carried further in *Postal Tel. Cable Co.* v. *Adams* (1895) 155 U. S. 688, where a tax, in form a privilege tax, but regulated in amount by the value of the company's property, determined as in the above cases, and being in lieu of taxes levied directly upon the property, was sustained as in substance a tax on the property. As stated by Mr. Chief Justice Fuller on page 696 of this case, such a tax could not be supported in addition to ordinary property taxation; it would then constitute a tax upon the privilege of doing business. The mere form of the statute will, therefore, not be decisive as to the validity of the tax; the other tax laws of the state must be examined. Two limitations on the power to assess such a tax follow from its nature. The amount may not be fixed arbitrarily, and must not exceed the amount of an ordinary property tax; *Postal Tel. Cable Co.* v. *Adams, supra; Postal Tel. Co.* v. *Richmond* (1901) 99 Va. 102; and non-payment must not involve a forfeiture of the right to do business within the state, but the tax must be collectible by merely ordinary methods. *Postal Tel. Co.* v. *Richmond, supra; Western Union Tel. Co.* v. *Massachusetts* (1888) 125 U. S. 530. But subject to these limitations, the cases, although decided by divided courts, have established the proposition that, although interstate commerce may not be taxed as such, yet burdens may be laid upon it by state taxation. See 5 COLUMBIA LAW REVIEW 298. The distinction between the two lines of cases seems to be that the taxes declared invalid fall directly or indirectly on interstate commerce as such, while in the cases of the taxes upheld, the burden falls only incidentally upon it, the tax being laid directly upon some other subject. *Postal Tel. Cable Co.* v. *Adams, supra,* 696. The case of *Maine* v. *Grand Trunk Ry. Co.* (1891) 142 U. S. 217, seems impossible to reconcile with this view. A tax levied upon the gross receipts received by the company within the state, was upheld on the ground that the state might tax the exercise of the corporate franchise within its jurisdiction. This case would seem unsound in principle. Beale, Foreign Corps. § 758. It is certainly not in accord with *Philadelphia Steamship Co.* v. *Pennsylvania, supra,* and *Ratterman* v. *Western Union Tel. Co.* (1888) 127 U. S. 411.

The constitutionality of license fees exacted as a condition precedent to the transaction of intrastate business by a corporation engaged also in interstate commerce has often been attacked. *New York State* v. *Roberts* (1893) 171 U. S. 658; *N. C. & St. L. Ry. Co.* v. *Alabama City* (1901) 134 Ala. 414; *United States Exp. Co.* v. *Allen* (1889) 39 Fed. 712. Where such a fee is required, it must appear that the fee is exacted only for the privilege of doing intrastate business and that the corporation is free to withdraw from this business and pursue its interstate business untramelled. Otherwise the statute will be construed as a veiled attempt to tax interstate commerce. *Pullman Co.* v. *Adams* (1903) 189 U. S. 420. But when this is established, the validity of such a tax would seem undoubted, even though it be directed to be paid from the proceeds of interstate commerce. *Allen* v. *Pullman Co., supra; Pullman Co.* v. *Adams, supra.* This principle is well illustrated in two cases recently decided, *State* v. *Western Union Tel. Co.* (Kan. 1907) 90 Pac. 299, and *State* v. *Pullman Co.* (Kan. 1907) 90 Pac. 319. A license fee, computed upon their total capital stock, was required from foreign corporations as a condition precedent to their doing business within the state. This tax was declared valid, even though it appeared that if intrastate business were discontinued, certain offices from which telegrams were sent into other states would have to be closed, not being supported by the interstate business alone. As no support is due to interstate business from intrastate business, and as the burden imposed upon interstate commerce was merely incidental, the decision seems to be sound, and the result reached better than the contrary holding in *United States Exp. Co.* v. *Allen, supra.*

THE TAXATION OF INTANGIBLE MOVABLES.—At the common law the maxim that movables follow the person was applied also in matters of taxation. *Bullock* v. *Guilford* (1887) 59 Vt. 516. But with the increase in the importance and distribution of personalty, the jurisdictions giving protection to a non-resident's property, enacted legislation taxing such property. *Boston Loan Co.* v. *Boston* (1884) 137 Mass. 332; 6 COLUMBIA LAW REVIEW 190. And it has lately been declared that the taxation at the owner's domicil of tangible personalty existing in another jurisdiction was in contravention of the Fourteenth Amendment. *Union, etc., Co.* v. *Kentucky* (1905) 199 U. S. 194; 6 COLUMBIA LAW REVIEW 190; 7 id. 309. The legislation taxing a non-resident's tangible property was followed by attempts to tax his credits. Such acts were at first sustained by analogy to the taxation of corporeal chattels in cases where the credits had assumed a concrete and tangible form. Bonds and deeds at common law were considered as in themselves property; *Blackstone* v. *Miller* (1903) 188 U. S. 189, 206; *Beers* v. *Shannon* (1878) 73 N. Y. 292, 299; and their presence was deemed sufficient to justify taxation. *People* v. *Ogdensburg* (1872) 48 N. Y. 390; *Missouri* v. *County Court* (1871) 47 Mo. 594. On this analogy were taxed, though the creditors in each case were non-residents, municipal bonds, *Western Assurance Co.* v. *Halliday* (1901) 110 Fed. 259, mortgages considered as realty, *Mumford* v. *Sewall* (1883) 11 Ore. 67, notes secured by mortgages on lands within the jurisdiction, *Poppleton* v. *Yamhill County*